Court No.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

A.O. No. 391 of 2003

United India Insurance Company Ltd.,
through its Divisional Manager,
Divisional Office, Nainital Road,
Haldwani, District-Nainital.

..... Appellant.

Versus

1. Smt. Pushpa Devi W/o late Diwan Ram,
   R/o Village & P.O. Chaurasi, Tehsil
   and District Bageshwar.
2. Sri Mahesh Chandra Arya S/o Sri Kishan Ram,
   R/o Village & Post Office Garurh, Tehsil
   and District Bageshwar, Uttaranchal.

..... Respondents.

.....

Sri B.S.Patni, learned counsel for the appellant,
None for the respondents.

Date: 31st Aug.,2004.

Hon'ble P.C.Verma, J.
Hon'ble B.S.Verma, J.

This appeal has been preferred against the judgment and award dated 02.09.2003 passed by Motor Accident Claims Tribunal/District Judge, Bageshwar in the Motor Accident Claim Petition No. 10 of 2002, Smt.Pushpa Devi versus Sri Mahesh Chandra Arya and another, whereby the claim petition of the claimant has been decreed for a compensation of Rs. 9,00,000/-against the Opp.party No.2- United India Insurance Company alongwith interest at the rate of 9% per annum from the date of application till the date of final payment.

2- Brief facts giving rise to this appeal are that on 6.7.2002 Diwan Ram-husband of the petitioner was

traveling with the bricks in Truck No. UP 28-0357. In the said truck besides deceased Diwan Ram, Lok Bahadur, Mukesh Kumar, Dinesh Chandra and Prem Bahadur and other persons were boarded. When the said truck reached near New Basti at Bageshwar-Dafot Motor Marg. it fell down the road due to rash and negligent driving of its driver. All the persons who were boarded in the said truck sustained grievous injuries. Diwan Ram died on the way to Hospital due to injuries received in the said accident. He was employed on the post of Havildar and was getting Rs. 9000/- per month as salary. Deceased Diwan Ram was 42 years old at the time of accident. The petitioner filed the claim petition for a compensation of Rs. 10,00,000/- on account of death of her husband Diwan Ram.

3- The opposite parties contested the claim petition before the Tribunal by filing their separate written statements. The Opp.party No.1 alleged that the truck in question fell into gorge due to sudden breaking of patching stone fixed on the side of the road. He further admitted the death of Diwan Ram in the said accident. It was also alleged that the driver of the truck was having a valid driving licence at the time of accident and the said truck was insured with the Opp. Party No.2- United India Insurance Company. The Insurance Company in its written statement stated that the offending truck was plying violating the terms and conditions of the insurance policy. It was also alleged by the Insurance Company that the deceased Diwan Ram was traveling unauthorisedly in the said truck which was also in violation of the conditions of the insurance policy, hence the Insurance Company is not liable for any compensation. The Tribunal, on the pleadings of the parties, framed necessary issues and after recording evidence of the parties decreed the claim petition

accordingly. Feeling aggrieved, the Opp.party No.2-United India Insurance Company has come up in this appeal.

4- The learned counsel for the appellant challenged the appeal mainly on the ground that the deceased was travelling a goods vehicle without ticket and as such he was a gratuitous passengers. It is also contended that it cannot be corroborated that the deceased was owner of goods or representative of the owner of goods. Therefore, the Insurance Company could not be held liable for payment. We have gone through the entire material on record and perused the judgment. Before the learned Tribunal the claimant-Pushpa Devi examined herself as P.W. 1 in support of her case. The opposite party No.1 has also produced Sri Mahesh Chandra as D.W.1 and driver of the offending truck Sri Kundan Singh as D.W.2. They both deposed on oath that deceased Diwan Ram hired the truck and was carrying bricks in the said truck as owner of the goods. The learned Tribunal rightly appreciated the evidence of the parties and relying on the case laws of the Apex Court in the case ***Ramesh Kumar versus National Insurance Compandy Ltd. and others,*** reported in ***2001 (3) Transport and Accidents Cases, 639 (Supreme Court)*** and **New India Assurance Company Ltd. versus Asha Rani,** reported in **(2003) 2 Supreme Court Cases, 223** in which the Apex Court has held that compensation awarded in such cases where deceased or inured persons were traveling in a goods carriage who were owner or his authorized representative, the Insurance Company is liable to pay the compensation. In view of this clear cut finding recorded by the Tribunal, it does not lie in the mouth of the appellant to reiterate the matter before this Court. We are of the opinion that the learned Tribunal following the case laws of the Apex Court rightly held liable the Insurance

Company to pay the compensation. However, nothing has been shown to us on behalf of the appellant-Insurance Company so as to warrant any interference with the findings arrived at by the learned Tribunal in the case under appeal.

5- Thus, in view of the above the appeal has no force on merit and is dismissed. The order impugned in this appeal is affirmed. There shall be no order as to costs. The amount, if deposited in the appeal, shall be remitted to the Tribunal concerned.

(B.S. Verma, J.) **(P.C. Verma, J.)**

31.08.2004
P.Singh